What if…

I want a no-sell buy-sell agreement

Often, one or more co-owners of a business want their family to continue to own their share of the business after their death. We see this with businesses that are expected to grow significantly. Each owner wants their family to share in the future growth even if they should die prematurely.

A no-sell buy/sell agreement can accomplish this goal and has a fairly simple structure. The management and the voting stock all remain with the surviving owner. The deceased's ownership interest remains with his family. We take each owner's interest in the business and divide into voting and nonvoting stock. Upon the death of one of the owners, the deceased's voting interest is bought by the surviving owner per the terms of the buy/sell agreement. The non-voting interest of the deceased owner remains with his family. This way, if the business does grow significantly, the family of the deceased will share in the growth. The control of the business remains in the hands of the surviving owner. The family of the deceased owner has a non-voting interest in the business only and cannot expect to see any money out of the business unless, and until, the business is sold.

The business owner should consult with their accountant and attorney before entering into a no-sell buy/sell agreement. When the business is recapitalized into voting and non-voting shares, each owner receives one voting share and 99 non-voting shares. We recommend that each business owner purchase life insurance on their own lives equal to their business value. This policy will provide funds for their family upon their death, guaranteeing their financial security until the business is sold. Under the buy/sell agreement, the business owners agree to buy each other's voting interest for a nominal sum. This can be funded with very inexpensive term insurance.

This is an excellent arrangement when the owners are family members such as siblings. It is an appropriate option when the business is in the growth stage and is involved in technology or an innovation where there will be significant growth. We have also done this many times on real estate transactions where the ultimate value of the real estate will be worth many times its value today.

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There is, however, a downside to this arrangement. The surviving owner is going to have to continue to run the business, grow the business and assume all of the liability, knowing that they will only realize their portion of the value in the case of a sale. The family of the deceased owner(s) will be receiving the remaining portions.

It is important to remember that we do not have a crystal ball and have no way of predicting the future. Many years ago, we designed a no-sell buy/sell arrangement for three brothers. The youngest brother was 54 and the two older brothers were 60 and 63. The 54-year-old was sure that he would be the last to die and lamented how he would have to work harder and longer than his brothers who would certainly die before him. It seemed unfair to him that he would have to share the sale proceeds with his brother's families. As fate would have it, he died of cancer 18 months later. The older brothers went on to work another 15 years. The business was worth approximately $2 million at the time of the death of the youngest brother. When the surviving brothers sold the business 15 years later, the sale price was $15 million. The deceased brother's family received about $5 million. The no-sell buy/sell worked well in this case.

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